REMARKS

Claims 8 through 15 and 17 through 19 were rejected under 35 U.S.C. § 102 for lack of novelty as evidenced by Gocho.

In the statement of the rejection the Examiner referred to Fig. 2 of Gocho and to portions of the text asserting the disclosure of a method corresponding to that claimed. This rejection is traversed.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc., 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003)*; *Crown Operations International Ltd. v. Solutia Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002)*. In imposing a rejection under 35 U.S.C. § 102, the Examiner is required to specifically identify wherein an applied reference is perceived to identically disclose each and every feature of a claimed invention. *In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993)*; *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984)*. That burden has not been discharged. Indeed, there is a significant difference between the claimed method and Gocho's method that scotches the factual determination that Gocho discloses a method identically corresponding to that claimed.

Firstly, the Examiner's reliance upon a foreign language reference does not adequately apprise Applicants of the basis for denying patentability to the claimed invention and, hence, raises a serious procedural due process issue. *Ex parte Bonfils, 64 USPQ2d 1456 (BPAI 2003)*; *Ex parte Gavin, 62 USPQ2d 1680 (BPAI 2001)*; *Ex parte Jones, 62 USPQ2d 1206 (BPAI 2001)*.

At any rate, for the Examiner's convenience, Applicants submit herewith as Exhibit A a complete English language translation of Gocho. Upon reading Gocho, it should be apparent that the disclosed method does not coincide with that claimed.

Specifically, independent claim 7 is directed to a method of fabricating the semiconductor device comprising a sequence of manipulative steps wherein an upper insulator film and a lower insulator film consisting of different materials are etched under substantially the same conditions. It is **not** apparent and the Examiner did **not** specifically identify wherein Gocho discloses any such manipulative steps. *In re Rijckaert, supra*; *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., supra.*

Indeed, Applicants would note that in paragraphs [0016] through [0019], Gocho discloses a manufacturing process illustrated in Fig. 1 wherein etching of the second insulating film (an upper insulator film) 17 consisting of a PSG film and a first insulating film (a lower insulator film) 16 consisting of a SiN film are etched under **different**, repeat **different**, etching conditions from each other. Specifically, the second insulating film 17 consisting of PSG is etched as set forth in paragraph [0017]. In contradistinction thereto, the first insulating film 16 consisting of SiN is etched under the conditions disclosed in paragraph [0017] which are entirely **different** from the conditions as set forth in paragraph [0017].

Moreover, in paragraph [0027], Gocho discloses a manufacturing process illustrated in Fig. 2 wherein a first insulating film (a lower insulator film) 16 and a second insulating film (an upper insulator film) 17 are etched under the conditions explained with respect to Fig. 1. In other words, the first insulating film 16 illustrated in Fig. 2 and the second insulating film 17 illustrated in Fig. 2 are conducted under the conditions as described in paragraphs [0017] and [0019], respectively, which are **different** from each other.

Based upon the foregoing it should be apparent that Gocho neither discloses nor suggests a method as claimed comprising the manipulative step of etching the upper insulator film and lower insulator film under substantially the same condition. This argued difference in manipulative steps between the claimed method and Gocho's method undermines the factual determination that Gocho discloses a method identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc., 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992)*; *Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986)*.

Applicants, therefore, submit that the imposed rejection of claims 8 through 15 and 17 through 19 under 35 U.S.C. § 102 for lack of novelty as evidenced by Gocho is not factually viable and, hence, solicit withdrawal thereof.

Claim 16 was rejected under 35 U.S.C. § 103 for obviousness predicated upon Gocho.

This rejection is traversed. Specifically, claim 16 depends from independent claim 17. Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claim 17 under 35 U.S.C. § 102 for lack of novelty as evidenced by Gocho. The Examiner's additional comments are not cured by the previously argued deficiencies of Gocho.

Applicants, therefore, submit that the imposed rejection of claim 16 under 35 U.S.C. § 103 for obviousness predicated upon Gocho is not factually or legally viable and, hence, solicit withdrawal thereof.

Based upon the foregoing it should be apparent that the imposed rejections have been overcome and that all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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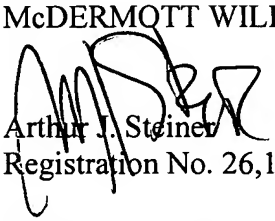

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Date: March 17, 2005